



Thinking about Bankruptcy? — Supplemental Notes

Types of bankruptcy

Three types of bankruptcy are Chapter 7, liquidation; Chapter 11, reorganization; and Chapter 13, repayment plan. Chapter 7 is the type most explicitly referred to when a person is said to “file for bankruptcy.”

Filing for bankruptcy

Persons filing for bankruptcy must present a complete and exhaustive record of their property, including all owners, co-owners, and co-signers.

When a petitioner files for bankruptcy, even such things as rent and utility deposits must be included on his or her asset list. Family heirlooms of sentimental value can be protected only within exempt limits allowed.

Co-signers of a petitioner’s loans are responsible for debts they have co-signed for and must themselves declare bankruptcy to be absolved of this responsibility.

Creditors of secured debt must be notified within 30 days of the bankruptcy filing regarding the intent of the petitioner to (1) surrender collateral, (2) claim collateral as exempt property, or (3) reaffirm the debt.

Once petition for bankruptcy is filed, all collection and repossession activities by collection companies, creditors, and their representatives must cease.

If collateral is surrendered or repossessed, it must be sold to satisfy the debt for an amount that is deemed commercially reasonable, and any surplus must be returned to the owner

Exempt and nonexempt property

Nonexempt debts, which cannot be discharged through bankruptcy, include individual income taxes, alimony and child support, legal fines and penalties, and educational loans unless bankruptcy occurs five years after beginning of repayment period. Also nonexempt are debts incurred for luxury goods and services, cash ad-

vances in excess of \$1,000 incurred within 60 days of filing petition for bankruptcy, and debts incurred through fraud, deception, or criminal acts.

A petitioner does not have to relinquish all possessions. Some property is exempt from liquidation. There are two lists of exemptions—the state and federal lists (see table on p. 2). A Hawaii resident may select either but not both. Those who select the Hawaii list may also include the federal non-bankruptcy exemptions. These relate to retirement benefits, survivor benefits, death and disability benefits, and other miscellaneous benefits.

Spouses who file together may double the amount of the exemptions allowed. For example, if a petitioner is allowed up to \$2,400 equity in an automobile, two spouses can be allowed up to \$4,800.

Many Hawaii petitioners find that the federal list of exemptions is best for them because of its “wild card,” and because many filers do not own a home. A wild card is an amount that can be applied to any property. The federal wild card is \$800 of any property or up to \$7,500 of any unused portion of the homestead exemption, which is \$15,000. Many petitioners do not own any property and therefore can claim the full \$7,500 against other property.

Bankruptcy cautions

It can be very unwise for a petitioner to prepare for bankruptcy without professional help, because actions taken prior to filing could jeopardize the process, waste limited resources, and even trigger felony charges. Giving preferential treatment (i.e., preferential transfers) to some creditors or friends is not allowed. Paying on dischargeable debts can waste limited resources. And lying about one’s property or resources could trigger felony perjury charges. Even *pro se* petitioners who file on their own behalf would likely benefit from some professional assistance in handling these matters and determining which exemption list to use.

State and federal exemption lists*

In general, both the state and federal exemption lists exempt part or all of one's property:

	Hawaii	Federal
Home equity	\$30,000 HOH \$20,000 Other	\$15,000 All
Motor vehicle	\$1,000	\$2,400
Household goods	all needed	\$8,000
Jewelry	\$1,000	\$1,000
Tools of trade	all needed	\$1,500
Pensions	all needed	all needed
Insurances	all needed	cash value to \$8,000
Property of	business partnership	business partnership
Wild card	none	\$800 any item or \$7,500 unused home equity
Special	some property held in tenancy by entirety	\$7,500 unused home equity

*Seek legal advice for accurate interpretation and updates.

Any amount or portion of debt forgiven by a creditor is counted as income for the borrower and may be taxable. In fact, forgiven amounts of \$600 or more trigger, by law, the creditor's filing of a 1099 report to the IRS. IRS publication 908 contains information for taxpayers regarding bankruptcy.

It can be inadvisable for a petitioner to reaffirm a loan that could be fully discharged through bankruptcy, because the reaffirmation cannot be discharged except by filing for bankruptcy, and that is not allowed for another seven years after the first filing.

What do most people who file for bankruptcy not know which they should know? According to one local attorney, they should know how they are going to handle their financial affairs after bankruptcy and prepare for it. They should also know that they must and ought to give up their goodies like expensive motor vehicles and sports equipment. They can then use their exemptions to hold onto more important property, like a home to live in.

Bankruptcy facts

Filing for bankruptcy in Hawaii costs \$300–\$1,000 on average. Fees cannot and should not be paid on a credit card. Money that would ordinarily go toward dischargeable debt service should be diverted for this purpose. Those with no assets need not file and have little reason to do so—they are judgment-proof.

All bankruptcies are handled in federal court. The Honolulu Bankruptcy Court and Clerk of Court is located at 1132 Bishop St., Suite 250L (use Union Mall entrance); telephone 522-8100.

Consumer Credit Counseling Services are excellent sources of credit education, counseling, and assistance. They deal exclusively with people who have the ability to repay their debts. But they cannot offer the universal compliance to a repayment plan and protection in the case of defaults that is possible through Bankruptcy Chapter 13.

(Disclaimer: These notes are subject to further qualification and periodic updates and should not be relied upon as the basis for specific financial or legal action. Consult appropriate legal and financial professionals.)

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